IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 4226 OF 2005
IN
CRIMINAL APPEAL NO. 627 OF 2005

Rajesh Gajanan Vaidya .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. A.P. Mundargi, Sr. Counsel with Mr. Indrajeet Joshi for applicant.

Mr. K.V. Saste, APP for State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.

Date : January 23, 2006.

P.C.:

1. Heard Mr. Mundargi, the learned Senior Counsel with Mr. Indrajeet Joshi for the applicant-husband who has been convicted and sentenced for an offence punishable under Section 302 of I.P.C. by the learned III Ad-hoc Addl. Sessions Judge, Nashik vide his order dated 6/5/2005. Criminal Appeal No.627 of 2005 against the said order has been admitted by this court on 22/7/2005 and hence this application for being released on bail.

2. The applicant was married on 25//5/1990 with deceased Kalindi and the date of incident is 28/8/2003

i.e. with a period of less than two months from the date the deceased gave birth to a baby girl on 1/7/2003. The complainant (brother of the deceased) lodged his F.I.R. on 8/9/2003 i.e. after 12 days of the incident and alleged the culpability of the applicant along with his family members.

3. Prosecution examined in all six witnesses including the Medical Officer P.W.6 and the maid servant Gayabai Shelar. The cause of death in the post mortem report was shown to be "shock due to 96% deep extensive burns". When the incident took place, admittedly, the applicant was in the house along with his mother and the deceased was found burnt in the balcony/gallery of the room and the defence taken was that she had committed suicide by pouring kerosene on herself. The time of the incident is between 12.30 to 01.30 noon. In support of the defence two witnesses were examined. D.W.1 was the Sub Engineer from the office of the applicant and D.W.2 was an Advocate from Dhule and the incident had taken place at Nashik in the house of the applicant. The testimony of both these witnesses has been discarded by the learned III Ad-hoc Addl. Sessions Judge, Nashik.

4. Having considered the reasoning set out by the

trial court in support of the order of conviction and sentence against the applicant and the post mortem report along with the depositions of P.W.6, the Medical Officer as well as the attending circumstances in the spot panchanama, the time of incident and the fact that the deceased was in her house gown at the relevant time, we are satisfied that there is no case made out to suspend the order of sentence under Section 389 of Cr.P .C. and release the applicant on bail.

5. Hence, this application is rejected. We, however, grant liberty to the applicant to apply for early hearing and also submit private paper book to be duly certified by the Registry after the record and proceedings received.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**